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 SCHWAN'S CONSUMER BRANDS OF NORTH AMERICA, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION,

Plaintiff,

v.

SCHWAN'S CONSUMER BRANDS OF
 NORTH AMERICA, INC.,

Defendant.

Case No.: C 05 02161 EMC

**STIPULATION TO MEDIATION,
 WITHDRAWAL OF MOTION TO
 DISMISS OR STAY WITHOUT
 PREJUDICE, TO EXTEND TIME FOR
 RESPONSE TO COMPLAINT, AND TO
 CONTINUE INITIAL CASE
 MANAGEMENT DATES; ORDER**

The Parties, Schwan's Consumer Brands of North America, Inc. ("Defendant") and Plaintiff Equal Employment Opportunity Commission ("Plaintiff"), through their counsel of record, request and stipulate as follows, and to amend the Order Setting Initial Case Management Conference, for good cause as follows:

WHEREAS, prior to the Plaintiff's filing of this action, Suzanna Mayhew, the employee on whose behalf this action was filed, filed an action against Defendant in the Superior Court of the State of California, entitled, *Mayhew v. Tony's Pizza dba Schwan's Consumer Brands of North America, Inc., et al.*, Sacramento Superior Court Case No. 04AS04463. Defendant Schwan's Consumer Brands of North America, Inc. ("Defendant") has filed a motion to dismiss

1 or stay this federal action based on the pendency of the state court action, which Defendant
2 contends is substantially similar to this action; and,

3 WHEREAS, the parties, including Ms. Mayhew, have agreed to attempt to resolve this
4 action and the state court action through a global mediation.

5 **NOW, THEREFORE, IT IS HEREBY STIPULATED TO BY THE PARTIES**
6 **THAT:**

7 1. The deposition of Suzanna Mayhew will be taken on October 12, 2005. Counsel
8 for Defendant has notified Plaintiffs' counsel that it may be necessary to exceed the 7 hour
9 limitation imposed by F.R.C.P., Rule 30(d)(2) for the deposition of Suzanna Mayhew, and
10 Plaintiff has agreed to stipulate to extending the deposition for up to an additional 7 hours if
11 requested by either party during the deposition.

12 2. The parties will schedule a mediation before a mutually-agreed upon neutral at
13 JAMS by no later than November 15, 2005.

14 3. Defendant hereby withdraws its motion to dismiss, currently pending for hearing
15 before this Court on October 7, 2005. This withdrawal is without prejudice as discussed below.

16 4. If this action is not settled at the mediation, no later than fourteen (14) days after
17 the completion of the mediation Defendant shall file an answer to the complaint, or place back
18 on calendar the motion to dismiss or stay if Ms. Mayhew does not dismiss the state court action
19 as she has agreed to do by stipulation. A true and correct copy of the state court stipulation is
20 attached hereto as Exhibit A.

21 5. The parties request that the dates for the parties to comply with their meet and
22 confer obligation, the preparation of a joint case management statement, the preparation and
23 service of initial disclosures, and the case management conference itself, be continued for forty-
24 five (45) days in order to give the parties time to resolve this action informally.

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26 ///

1 DATED: September ____, 2005

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

2
3 By: _____/s/

4 SANYA HILL-MAXION

5
6 DATED: September ____, 2005

GOLDFARB & LIPMAN LLP

7
8 By: _____/s/

9 JAMES T. DIAMOND, JR.
Attorneys for Defendant
SCHWAN'S CONSUMER BRANDS
10 NORTH AMERICA, INC.

11 **ORDER**

12 Good cause appearing, IT IS ORDERED:

13 1. The Case Management Conference currently scheduled in this action for October
14 28, 2005 is continued to December 16, 2005, at 8:30 a.m. in Courtroom 8, 19th Floor, 450
15 Golden Gate Avenue, San Francisco, CA 94103.

16 2. The parties shall meet and confer as required by Rule 26 by no later than
17 Nov. 25, 2005.

18 3. The parties shall serve their initial disclosures by no later than Dec. 09, 2005.

19 4. The parties shall file the Rule 26(f) report and joint case management statement
20 by no later than Dec. 09, 2005.

21 Dated: Sept. 09, 2005

